



# COMMONWEALTH of VIRGINIA

## DEPARTMENT OF ENVIRONMENTAL QUALITY

W. Tayloe Murphy, Jr.  
Secretary of Natural Resources

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Robert G. Burnley  
Director

Thomas L. Henderson  
Regional Director

### **STATE WATER CONTROL BOARD ENFORCEMENT ACTION**

#### **A SPECIAL ORDER BY CONSENT**

#### **ISSUED TO**

**The Town of Appomattox  
Permit Number VA0020249**

#### **SECTION A: Purpose**

This is a Consent Special Order issued under the authority of Va. Code §§ 10.1-1185 and 62.1-44.15(8a), between the State Water Control Board and the Town of Appomattox for the purpose of resolving certain violations of environmental law and regulations.

#### **SECTION B: Definitions**

Unless the context clearly indicates otherwise, the following words and terms have the meanings assigned to them below:

1. "Va. Code" means the Code of Virginia (1950), as amended.
2. "Board" means the State Water Control Board, a permanent citizen board of the Commonwealth of Virginia as described in Va. Code §§ 10.1-1184 and 62.1-44.7.
3. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Va. Code § 10.1-1183.
4. "Director" means the Director of the Department of Environmental Quality.
5. "Order" means this document, also known as a Consent Special Order.
6. "Town" or "Appomattox" means the Town of Appomattox located in Appomattox County, Virginia.

7. "Facility" or "WWTP" means the Waste Water Treatment Plant.
8. "SCRO" means the South Central Regional Office of the DEQ, located in Lynchburg, Virginia.
9. "VPDES" means the Virginia Pollutant Discharge Elimination System.
10. "Permit" means VPDES Permit number VA0020249 issued to the Town on October 18, 2004, which expires on October 17, 2009.

**SECTION C: Findings of Facts and Conclusions of Law**

1. The Town owns and operates the Facility located in Appomattox, Virginia. The Facility is the subject to the Permit, which allows the Town to discharge treated wastewater into Caldwell's Creek of the Roanoke River Basin in strict compliance with the terms, limitations, and requirements delineated therein.
2. During the prior permit cycle the Facility had a schedule of compliance for the effluent limit of total recoverable copper ("copper"), which took effect in September 2003. The copper effluent limit in the Permit is 21 micrograms per liter ("ug/l").
3. Based on the discharge monitoring reports ("DMR") submitted by the Town in the last half of 2003, the Department issued Notice of Violation ("NOV") number, W2004-03-L-0014 on March 3, 2004, for the following violations:
  - a. Failure to achieve the minimum effluent limit of pH, chlorine total contact and instantaneous chlorine for the month of July 2003;
  - b. Failure to report copper and zinc in October 2003;
  - c. Exceeding the copper effluent limit in November and December 2003;
  - d. Failure to submit the first year water quality standards report by the due date in the Permit; and
  - e. Failure to submit the fifteenth quarter progress report for copper and zinc by the due date in the Permit.
4. Va. Code § 62.1-44.5.A prohibits, *inter alia*, the discharge of "sewage, industrial wastes, other wastes, or any noxious or deleterious substances" to State waters except in compliance with a permit issued by the Board.

5. Va. Code § 62.1-44.3 defines state waters as “all water, on the surface or under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction, including wetlands.”
6. In a letter dated March 18, 2004, the Town attributed the violations cited in the NOV to inflow and infiltration (“I and I”), equipment failure, and operator error. In an effort to meet the copper limit the Town had been eliminating sources, e.g., copper piping from industry sources. However, given the vast amount of copper piping in domestic households, and the cost of upgrading the WWTP, the Town was considering the use sequestering agents to reduce copper leaching in the pipes.
7. On June 14, and July 29, 2004, the Town and DEQ met to discuss treatment options to meet the copper limit and address I and I. The Town had developed and was implementing 4 million dollars of I and I rehabilitation projects. To address copper the Town chose to use the sequestering agents of soda ash and phosphate, which Appomattox began adding to the Town’s drinking water wells after receiving approval from the health department.
8. During the interim the Department issued NOVs numbers, W2004-05-L-0011, W2004-08-L-0009, W2004-09-L-0008, W2004-10-L-0008, W2004-11-L-0006, W2005-01-L-0009, W2005-02-L-0002, W2005-03-L-0006, W2005-04-L-0003, and W2005-05-L-0007. In addition to the copper effluent limit violations, which occurred monthly, Appomattox exceeded total suspended solids once, instantaneous chlorine once, and did not update the Facility’s operation and maintenance manual by the due date in the Permit.
9. The Town obtained health department approval on February 8, 2005. The Town will have all wells on sequestering agents by the end of July 2005.
10. The Town believes that the sequestering agents will enable the Facility to comply with the copper effluent limit. However, it will take several months to determine the effect of this treatment.

**SECTION D: Agreement and Order**

Accordingly, the Board, by virtue of the authority granted in Va. Code § 62.1-44.15(8a), orders Appomattox, and Appomattox consents, to perform the actions contained in Appendix A and Appendix B of this Order.

**SECTION E: Administrative Provisions**

1. The Board may modify, rewrite, or amend the Order with the consent of Appomattox, for good cause shown by Appomattox or on its own motion after notice and opportunity to be heard.
2. This Order only addresses and resolves those violations specifically identified by the NOV's cited herein. This Order shall not preclude the Board or the Director from taking any action authorized by law, including, but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations that occur after this Order is issued; (2) seeking subsequent remediation of the Facility as may be authorized by law; or (3) taking subsequent action to enforce the terms of this Order. Nothing herein shall affect enforcement actions by other state, local, or federal regulatory authorities, whether or not arising out of the same or similar facts.
3. For purposes of this Order and subsequent actions with respect to this Order, Appomattox admits to the jurisdictional allegations, factual findings, and conclusions of law contained herein.
4. Appomattox declares it has received fair and due process under the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, and the State Water Control Law, and waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to enforce this Order.
5. Failure by Appomattox to comply with any of the terms of this Order shall constitute a violation of an Order of the Board. Nothing herein shall

waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations.

6. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
7. Appomattox shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or other such occurrence. Appomattox shall demonstrate that such circumstances resulting in noncompliance were beyond the control of Appomattox and not due to a lack of good faith or diligence. Appomattox shall notify the DEQ Regional Director in writing when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
  - a. the reasons for the delay or noncompliance;
  - b. the projected duration of any such delay or noncompliance;
  - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
  - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to notify the Regional Director verbally within one (1) business day and in writing within five (5) business days of learning of any condition listed above, which Appomattox intends to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

8. This Order is binding on the parties hereto, their successors in interest, designees, and assigns jointly and severally.
9. This Order shall become effective upon execution by the Director, or his designee, and Appomattox.
10. This Order shall continue in effect until:

- a. Appomattox petitions the Regional Director to terminate the Order after it has completed all requirements of the Order, and the Regional Director determines that all requirements of the Order have been satisfactorily completed; or
- b. The Director, his designee, or the Board may terminate this Order in his or its sole discretion upon 30 days written notice to Appomattox.

Termination of this Order, or of any obligation imposed in this Order, shall not operate to relieve Appomattox from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

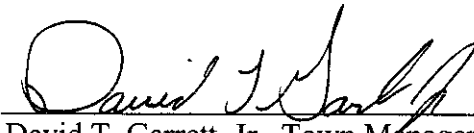
11. By its signature below, Appomattox consents to the issuance of this Order.

And it is so ORDERED this 7<sup>th</sup> day of December, 2005.



Robert G. Burnley, Director  
Department of Environmental Quality

Appomattox consents to the issuance of this Order.

Date: 8/3/05 By:   
David T. Garrett, Jr., Town Manager, Town of Appomattox

Commonwealth of Virginia

City/County of Appomattox

The foregoing document was signed and acknowledged before me this 3<sup>rd</sup> day

of August, 2005, by David T. Garrett, Jr., Town Manager, Town of  
Appomattox.

Roxanne W. Paulette  
Notary Public

My commission expires: July 31, 2007.

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## **Appendix A**

### **The Town of Appomattox shall:**

1. For a period of one year from the effective date of this Order, Appomattox shall maintain the use of sequestering agents in the Town's drinking water supply wells to achieve compliance with the copper effluent limit contained in the Permit.
2. If compliance with the copper effluent limit is not achieved, Appomattox shall propose an alternative solution within 60 days of the one year deadline noted in item one of Appendix A.

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## **APPENDIX B**

### **Interim Copper limitation:**

During the period beginning with the effective date of this Order discharges from the WWTP shall be limited and monitored in accordance with VPDES Permit VA0020249, except as specified below:

|                           | Monthly Average | Weekly Average |
|---------------------------|-----------------|----------------|
| Copper, Total Recoverable | 45 ug/L         | 45 ug/L        |

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